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PAR, INC. dba PAR NORTH AMERICA

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSEPHINE THORNTON,

Plaintiff,

v.

ABA RECOVERY SERVICE, INC.,
REPOSSESSION SPECIALISTS,
PAR, INC. dba PAR NORTH
AMERICA, FIRST ASSOCIATES
LOAN SERVICING, LLC dba MEGA
AUTO FINANCE, and DOES 1
through 10, inclusive

Defendants.

CASE NO.: 15CV1971 CAB KSC

**ANSWER ON BEHALF OF
DEFENDANT PAR INC. dba PAR
NORTH AMERICA TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

District Judge: Hon. Cathy Ann
Bencivengo / Courtroom 4C
Magistrate Judge: Hon. Karen S. Crawford
Action Filed: September 3, 2015
Trial Date: Not Yet Assigned

COMES NOW Defendant PAR INC. dba PAR NORTH AMERICA, by and through counsel, and in Answer to Plaintiff's First Amended Complaint on file herein, states as follows:

1. In answer to paragraph 1, Defendant admits it has an agreement with Mega Auto Finance by which defendant forwards assignments to repossess automobiles to third parties who perform the actual repossession, and admits that Defendant forwarded an assignment from Mega Auto Finance for repossession of

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1 Plaintiff's vehicle to ABA, as an independent contractor. Defendant otherwise
2 denies the allegations in paragraph 1.

3 2. In answer to paragraph 2, Defendant denies each and every allegation
4 contained in paragraph 2.

5 3. In answer to paragraph 3, Defendant denies each and every allegation
6 contained in paragraph 3.

7 4. In answer to paragraph 4, Defendant denies each and every allegation
8 contained in paragraph 4.

9 5. In answer to paragraph 5, Defendant denies each and every allegation
10 contained in paragraph 5.

11 6. In answer to paragraph 6, admits the jurisdiction allegations in
12 paragraph 6.

13 7. In answer to paragraph 7, Defendant admits the venue allegations in
14 paragraph 7.

15 8. In answer to paragraph 8, Defendant lacks sufficient knowledge or
16 information to form a belief as to the truth of the allegations contained in
17 paragraph 8 and denies such allegations.

18 9. In answer to paragraph 9, Defendant lacks sufficient knowledge or
19 information to form a belief as to the truth of the allegations contained in
20 paragraph 9 and denies such allegations.

21 10. In answer to paragraph 10, Defendant lacks sufficient knowledge or
22 information to form a belief as to the truth of the allegations contained in
23 paragraph 10 and denies such allegations.

24 11. In answer to paragraph 11, Defendant admits that it is an Indiana
25 corporation. Defendant denies the remaining allegations in paragraph 11.

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1 12. In answer to paragraph 12, Defendant lacks sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in
3 paragraph 12 and denies such allegations.

4 13. In answer to paragraph 13, Defendant lacks sufficient knowledge or
5 information to form a belief as to the truth of the allegations contained in
6 paragraph 13 and denies such allegations.

7 14. In answer to paragraph 14, Defendant denies each and every
8 allegation contained in paragraph 14.

9 15. In answer to paragraph 15, Defendant realleges all responses to
10 paragraphs 1-14 as though fully set herein.

11 16. In answer to paragraph 16, Defendant denies each and every
12 allegation contained in paragraph 16.

13 17. In answer to paragraph 17, Defendant denies each and every
14 allegation contained in paragraph 17.

15 18. In answer to paragraph 18, Defendant denies each and every
16 allegation contained in paragraph 18.

17 19. In answer to paragraph 19, Defendant denies each and every
18 allegation contained in paragraph 19.

19 20. In answer to paragraph 20, Defendant admits that the cited statutes
20 exist, however, Defendant denies any violations of such statutes.

21 21. In answer to paragraph 21, Defendant denies each and every
22 allegation contained in paragraph 21.

23 22. In answer to paragraph 22, Defendant denies each and every
24 allegation contained in paragraph 22.

25 23. In answer to paragraph 23, Defendant denies each and every
26 allegation contained in paragraph 23.

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1 24. In answer to paragraph 24, Defendant realleges all responses to
2 paragraphs 1-23 as though fully set herein.

3 25. In answer to paragraph 25, Defendant lacks sufficient knowledge or
4 information to form a belief as to the truth of the allegations contained in
5 paragraph 25 and denies such allegations.

6 26. In answer to paragraph 26, Defendant lacks sufficient knowledge or
7 information to form a belief as to the truth of the allegations contained in
8 paragraph 26 and denies such allegations.

9 27. In answer to paragraph 27, Defendant denies each and every
10 allegation contained in paragraph 27.

11 28. In answer to paragraph 28, Defendant lacks sufficient knowledge or
12 information to form a belief as to the truth of the allegations contained in
13 paragraph 28 and denies such allegations.

14 29. In answer to paragraph 29, Defendant lacks sufficient knowledge or
15 information to form a belief as to the truth of the allegations contained in
16 paragraph 29 and denies such allegations.

17 30. In answer to paragraph 30, Defendant denies each and every
18 allegation contained in paragraph 30.

19 31. In answer to paragraph 31, Defendant denies each and every
20 allegation contained in paragraph 31.

21 32. In answer to paragraph 32, Defendant denies each and every
22 allegation contained in paragraph 32.

23 33. In answer to paragraph 33, Defendant denies each and every
24 allegation contained in paragraph 33.

25 34. In answer to paragraph 34, Defendant denies each and every
26 allegation contained in paragraph 34.

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1 35. In answer to paragraph 35, Defendant denies each and every
2 allegation contained in paragraph 35.

3 36. In answer to paragraph 36, Defendant realleges all responses to
4 paragraphs 1-35 as though fully set herein.

5 37. In answer to paragraph 37, Defendant denies each and every
6 allegation contained in paragraph 37.

7 38. In answer to paragraph 38, Defendant denies each and every
8 allegation contained in paragraph 38.

9 39. In answer to paragraph 39, Defendant lacks sufficient knowledge or
10 information to form a belief as to the truth of the allegations contained in
11 paragraph 39 and denies such allegations.

12 40. In answer to paragraph 40, Defendant lacks sufficient knowledge or
13 information to form a belief as to the truth of the allegations contained in
14 paragraph 40 and denies such allegations.

15 41. In answer to paragraph 41, Defendant denies each and every
16 allegation contained in paragraph 41.

17 42. In answer to paragraph 42, Defendant denies each and every
18 allegation contained in paragraph 42.

19 **FIRST AFFIRMATIVE DEFENSE**

20 43. Defendant is informed and believes and on that basis alleges that
21 Plaintiff's First Amended Complaint fails to state a claim against Defendant for
22 which relief may be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 44. Defendant is informed and believes and upon such information and
25 belief alleges that at all times mentioned herein, if any Defendant was negligent,
26 the conduct of all other parties, both known and unknown, should be compared to
27 determine the degree of fault, if any, between the parties.

1 **THIRD AFFIRMATIVE DEFENSE**

2 45. Defendant is informed and believes and upon such information and
3 belief alleges that at all times mentioned herein, Plaintiff was negligent, careless
4 and reckless and unlawfully conducted herself so as to substantially contribute to
5 Plaintiff's alleged injuries and damages compared to the conduct of all other
6 parties, all of which said negligence either bars in whole or in part damages sought
7 herein.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 46. Defendant is informed and believes and upon such information and
10 belief alleges that at the time and place of the incident alleged in Plaintiff's First
11 Amended Complaint, the Plaintiff knew of the danger and risk incident to the
12 undertaking, but despite such knowledge, Plaintiff freely and voluntarily assumed
13 and exposed herself to all risk of harm and the consequential injuries and damages,
14 if any, therefrom.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 47. Defendant is informed and believes and thereon alleges that in the
17 event Plaintiff should establish any liability on the part of this answering
18 Defendant, which liability is expressly denied, this answering Defendant may not
19 be obligated to pay sums representing a proportion or percentage of fault not
20 his/her own, but that of Plaintiff, other parties to this action and third persons not
21 parties to this action. Defendant is entitled to an adjudication and determination of
22 the respective proportions or percentages of fault, if any, on this answering
23 Defendant's part and on the part of the Plaintiff and other parties to this action and
24 third persons not parties to this action pursuant to the Doctrines of Comparative
25 Negligence and the Fair Responsibility Act of 1986, codified in Civil Code §1431-
26 1431.5.

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 48. Defendant is informed and believes and thereon alleges that at all
3 times mentioned herein, if any defendant was negligent, co-defendants, both
4 known and unknown, were negligent, careless and reckless and unlawfully
5 conducted themselves so as to substantially contribute to Plaintiff's injuries,
6 damages and losses, and said negligence, if any, either bars in whole or in part
7 damages sought herein against this answering defendant.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 49. Defendant is informed and believes and thereupon alleges that its
10 action or inaction was not the sole, legal or proximate cause of the incidents upon
11 which liability is based or damages awarded, if any, and that damages awarded, if
12 any, must be apportioned according to the respective fault of all parties, persons or
13 entities, or their agents, servants and employees, whether or not parties to this
14 litigation, who contributed to or caused the incidents or damages alleged in the
15 First Amended Complaint.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 50. This answering Defendant is informed and believes and thereon
18 alleges that the negligence, if any, of this answering Defendant was not a
19 substantial factor in bringing about the Plaintiff's alleged injuries and damages,
20 and therefore was not a contributing cause thereof, but was superseded by the
21 negligence of others, whose negligence was an independent, intervening,
22 superseding and a proximate cause of any injury or damage suffered by the
23 Plaintiff.

24 **NINTH AFFIRMATIVE DEFENSE**

25 51. Defendant is informed and believes and upon such information and
26 belief alleges that Plaintiff has failed to mitigate the damages referred to in the
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1 First Amended Complaint, barring relief, in whole or in part, as to this answering
2 Defendant.

3 **TENTH AFFIRMATIVE DEFENSE**

4 52. This answering Defendant is informed and believes and thereon
5 alleges that Plaintiff's claims are barred by Plaintiff's own willful misconduct.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 53. This answering Defendant is informed and believes and thereon
8 alleges that Plaintiff's claims are barred by the doctrine of estoppel.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 54. This answering Defendant is informed and believes and thereon
11 alleges that Plaintiff's claims are barred by the doctrine of waiver.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 55. This answering Defendant is informed and believes and thereon
14 alleges that the First Amended Complaint and the averments thereof are uncertain,
15 vague and ambiguous.

16 **FOURTEENTH AFFIRMATIVE DEFENSE**

17 56. This answering Defendant is informed and believes and thereon
18 alleges that the First Amended Complaint and every cause of action contained
19 therein, is barred by the provisions of California Code of Civil Procedure Sections
20 337, 337.1, 337.15, 338, 339, 339.5, 340, 342, 343, as well as Civil Code Section
21 2079.4, and any and all other applicable statutes of limitation.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 57. This answering Defendant is informed and believes and thereon
24 alleges that Plaintiff has voluntarily engaged in wrongful and bad faith conduct and
25 activities with respect to the matters and transactions referred to in the First
26 Amended Complaint herein, barring any and all relief against this answering
27 Defendant under the doctrine of unclean hands.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 58. This answering Defendant is informed and believes and thereon
3 alleges that Plaintiff's claims that Defendant engaged in unfair debt collection
4 practices in violation of the Fair Debt Collections Practices Act and California
5 Civil Code §§1788, et seq., are barred by other provisions of Federal and
6 California State law.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 59. This answering Defendant is informed and believes and thereon
9 alleges that Plaintiff has failed to plead with particularity the circumstances
10 constituting the alleged fraud and/or misrepresentation.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 60. This answering Defendant is informed and believes and thereon
13 alleges that Plaintiff has engaged in conduct and activities, pursuant to which she
14 has waived any and all claims and/or causes of action she may have against this
15 answering Defendant.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 61. This answering Defendant is informed and believes and thereon
18 alleges that Plaintiff has engaged in conduct and activities by reason of which she
19 is estopped to assert any claim or cause of action against this answering Defendant.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 62. This answering Defendant is informed and believes and thereon
22 alleges that Plaintiff has not suffered any injury or damage whatsoever, and further
23 denies that Defendant is liable to Plaintiff for any injury or damage whatsoever.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 63. This answering Defendant is informed and believes and thereon
26 alleges that this Defendant has met all appropriate standards for professional
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1 conduct according to all rules promulgated in the Business and Professions and
2 Civil Code Sections.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 64. This answering Defendant is informed and believes and thereon
5 alleges that the Plaintiff's claims are barred, because the alleged acts of Defendant,
6 forming the basis of the First Amended Complaint, were lawful, explicitly
7 approved and/or exempt from prosecution.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 65. This answering Defendant is informed and believes and thereon
10 alleges that Plaintiff's claims are barred, in whole or in part, because Defendant, at
11 all times, acted in good faith and did not directly or indirectly perform any act
12 whatsoever that would constitute a violation of any right of Plaintiff's or any duty
13 owed to Plaintiff.

14 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

15 66. This answering Defendant is informed and believes and thereon
16 alleges that the alleged representations are not actionable statements of fact under
17 applicable law.

18 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

19 67. This answering Defendant denies each and every claim of Plaintiff
20 and denies that Defendant engaged in any wrongdoing or error of any kind.
21 However, should any alleged error be identified, then Plaintiff's claims are barred
22 because any alleged error on Defendant's part was a bona fide error
23 notwithstanding Defendant's use of reasonable procedures adopted to avoid any
24 such error.

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1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 68. This answering Defendant is informed and believes and thereon
3 alleges that Plaintiff has failed to set forth facts sufficient to support an award for
4 attorneys' fees.

5 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

6 69. This answering Defendant is informed and believes and thereon
7 alleges that it is entitled to the reasonable value of its attorneys' fees, costs of suit
8 and other litigation expenses incurred in the defense of this action.

9 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

10 70. This answering Defendant is informed and believes and thereon
11 alleges that the First Amended Complaint and the purported causes of action
12 alleged therein fail to set forth facts sufficient to allow for recovery of punitive or
13 exemplary damages from Defendant.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 71. This answering Defendant is informed and believes and thereon
16 alleges that the First Amended Complaint, to the extent it seeks punitive or
17 exemplary damages, violates the rights of Defendant to procedural and substantive
18 due process under the Fourteenth Amendment to the United States Constitution
19 and under the Constitution of the State of California.

20 **THIRTIETH AFFIRMATIVE DEFENSE**

21 72. This answering defendant alleges that plaintiff lacks the standing to
22 bring suit against this answering defendant before this Court.

23 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

24 73. This answering defendant alleges that the negligent actions of others
25 constitute superseding, intervening causes of Plaintiff's alleged injuries and/or
26 damages.

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1 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2 74. This answering defendant alleges that Plaintiff's First Amended
3 Complaint and each purported cause of action therein are barred by the doctrines of
4 express and implied consent by Plaintiff.

5 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

6 75. This answering Defendant is informed and believes and thereon
7 alleges that the Plaintiff's First Amended Complaint, and each cause of action
8 therein, is stated in conclusory terms, and therefore said Defendant cannot fully
9 anticipate all affirmative defenses which may be applicable to this action.
10 Accordingly, this answering Defendant reserves the right to add additional
11 affirmative defenses.

12 WHEREFORE, this answering Defendant prays judgment against Plaintiff
13 as follows:

- 14 1. That Plaintiff take nothing by way of the First Amended Complaint;
15 2. That Judgment be entered in favor of Defendant and against Plaintiff
16 on all causes of action;
17 3. For attorneys' fees and costs of suit incurred herein; and
18 4. For such other and further relief as the Court may deem just and
19 proper.

20 Dated: February 2, 2016

FARMER CASE & FEDOR
By:

21
22
23 /s/ Anthony T. Case
 ANTHONY T. CASE, ESQ.
 MICHELE M. ANGELES, ESQ.
24 Attorneys for Defendant
 PAR, INC. dba PAR NORTH
25 AMERICA
26
27
28

1 **Case Name:** Thornton v. ABA Recovery Service, Inc., et al.
2 **Southern District Court of California:** 15CV1971 CAB KSC

3 **DECLARATION OF SERVICE**

4 I hereby declare as follows:

5 I am, and was at the time of service of the papers referred to herein, over the
6 age of eighteen (18) years, not a party to the action, and employed in the County of
7 San Diego, State of California. My business address is 402 W. Broadway, Suite
8 1100, San Diego, California 92101.

9 I caused to be served the following document(s):

10 **ANSWER ON BEHALF OF DEFENDANT PAR INC. dba PAR NORTH**
11 **AMERICA TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

12 of which THE ORIGINAL DOCUMENT OR A TRUE AND CORRECT COPY is
13 attached hereto, addressed to each such addressee respectively as follows:

14 Alexander B. Trueblood, Esq.
15 Trueblood Law Firm
16 10940 Wilshire Blvd., Ste. 1600
17 Los Angeles, CA 90024
18 (310) 443-4139 / Fax: (310) 943-2255
19 alec@hush.com
20 **COUNSEL FOR PLAINTIFF**
21 **JOSEPHINE THORNTON**

22 ☒ **BY CM/ECF:** I electronically filed the foregoing document(s) with the Clerk
23 of the Court using the CM/ECF system, which will send an email notification of
24 such filing to the person(s) so designated above.

25 ☐ **BY E-MAIL:** I caused said document(s) to be delivered via electronic mail (e-
26 mail) to the person(s) so designated above.

27 ☐ **BY U.S. MAIL:** I placed each sealed, prepaid envelope for collection and
28 mailing at 402 W. Broadway, San Diego, California, 92101. I am readily familiar
with the business practice for collection and processing of correspondence for
mailing with the United States Postal Service pursuant to which practice the
correspondence will be deposited with the United States Postal Service this same
day in the ordinary course of business.

☐ **BY FACSIMILE:** I caused said document(s) to be transmitted by facsimile
transmission. The name(s) and facsimile machine telephone number(s) of the
person(s) served are set forth above. The sending facsimile machine properly
issued a transmission report confirming that the transmission was complete and
without error.

☐ **BY OVERNIGHT MAIL:** I caused said document(s) to be deposited in a box or
other facility regularly maintained by an express service carrier providing overnight
delivery in an envelope or package designated by the express service carrier with
delivery fees paid or provided.

1 ☐ BY PERSONAL SERVICE: I caused such document(s) to be hand-delivered to
2 the person(s) served hereunder. A separate Proof of Personal Service will be
provided.

3 I declare under penalty of perjury under the laws of the State of California
4 that the foregoing is true and correct. Executed February 2, 2016.

5 /s/ Christina Fedor
Christina Fedor